

Letter of Findings: 01-20150042
Income Tax
For the Year 2011

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual established that he was not an Indiana resident and had no Indiana domicile during 2011 and therefore owed no Indiana income tax for that year. Since no base tax was owed, penalty was dismissed.

ISSUES

I. Income Tax–Residency.

Authority: IC § 6-3-1-12; IC § 6-8.1-5-1; State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-22](#); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of Indiana individual income tax.

II. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-3.

Taxpayer protests the imposition of a penalty.

STATEMENT OF FACTS

Taxpayer is an individual. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2011 but that Taxpayer neither filed a 2011 Indiana individual income tax return nor paid any 2011 Indiana individual income tax. Taxpayer protested the Department's determination of residency and the imposition of income tax plus penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax - Residency.

DISCUSSION

Taxpayer protests the imposition of Indiana adjusted gross income tax for the tax year 2011. The Department determined that Taxpayer was an Indiana resident for all of 2011 because he had an Indiana driver's license and claimed the homestead deduction on a house he owned in Indiana. Taxpayer argues that he and his family left Indiana in 2006. Therefore, Taxpayer argues, he was neither an Indiana resident nor did he have an Indiana domicile for the tax year 2011. Therefore, Taxpayer argues, he did not need to file a 2011 Indiana income tax return nor did he owe any Indiana income tax for that year.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a

statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Pursuant to IC § 6-3-1-12, a resident is defined as follows:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

In other words, a resident includes individuals who are domiciled in Indiana and/or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

"Domicile" Defined. For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
 - (2) Registering to vote
 - (3) Seeking elective office
 - (4) Filing a resident state income tax return or complying with the homestead laws of a state
 - (5) Receiving public assistance
 - (6) Titling and registering a motor vehicle
 - (7) Preparing a new last will and testament which includes the state of domicile.
- (Emphasis added).

In other words, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

The Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), in which the court provided:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." Scott, 171 Ind. at 361, 86 N.E. at 413. **Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there.** "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." Rogers, 226 Ind. at 35-36, 77 N.E.2d at 595-96. Id. at 1317.

(Emphasis added).

Therefore, an examination of Taxpayer's acts is required to determine if Taxpayer had the intention to acquire a new domicile outside Indiana and to abandon his domicile in Indiana.

A review of the domiciliary criteria listed under [45 IAC 3.1-1-22](#) is illuminating in this matter. Taxpayer moved all of

his and his family's possessions to another jurisdiction in 2006, following a job layoff in Indiana. Taxpayer secured another job in the other jurisdiction and began the process of moving the entirety of his family and their possessions to the new jurisdiction and also selling his Indiana house. Taxpayer was able to supply documentation establishing that he and his family lived in the other jurisdiction beginning in 2006. The documentation included the other jurisdiction's driver's licenses, residence identification cards for the other jurisdiction, bank documents and mortgage documents listing Taxpayer's address in the other jurisdiction, employer verification of Taxpayer's location in the other jurisdiction as of 2006, United States federal income tax forms listing Taxpayer's home address in the other jurisdiction, real estate agent agreements listing the Indiana house for sale in 2006, property management agreements for the maintenance of the Indiana house, and insurance company documents canceling coverage of the Indiana house due to vacancy.

While it is true that Taxpayer took the property tax homestead deduction on the Indiana house when it was first purchased, it is also true that Taxpayer was actively trying to sell the house. Selling the house would have eliminated the homestead deduction issue. Taxpayer also provided documentation showing that he hired an accounting firm to handle his tax duties in Indiana and the new jurisdiction. He assumed that they correctly dealt with property taxes as well as other taxes. Thus, his intention was to have no contact with Indiana after his move to the other jurisdiction in 2006.

Also, Taxpayer explained that he held an Indiana driver's license in 2011, but that he also held a Colorado driver's license in 2011 since he was undergoing job training in Colorado that year, as well as the driver's license in the new jurisdiction to which he had moved in 2006. Taxpayer explains that he came to Indiana to visit for two weeks, during which time he was informed that he needed to acquire an Indiana license if he was going to drive in Indiana. Whether or not the information regarding the necessity of acquiring an Indiana license was correct is irrelevant because Taxpayer was able to establish that he only stayed in Indiana for 14 days in 2011, not more than 183 days which is the threshold listed by IC § 6-3-1-12(b).

In all, it is clear that Taxpayer did intend to abandon his Indiana domicile and to acquire a new domicile in the other jurisdiction, thereby meeting the standard explained by the court in Bayh. Taxpayer undertook numerous acts to evidence his intention to abandon his Indiana domicile and to establish a new domicile in the other jurisdiction. Also, Taxpayer was able to establish that he spent less than 183 days in Indiana during 2011, as explained by IC § 6-3-1-12(b). Thus, while the Department's initial position regarding residency based on the two previously mentioned factors was reasonable, Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration - Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty pursuant to IC § 6-8.1-10-3. As explained in Issue I above, in the course of the protest process Taxpayer provided adequate explanation and documentation to explain why he did not file an Indiana income tax return for 2011. In the instant case, Taxpayer has been sustained on the imposition of base tax; therefore the penalty is reduced to zero also.

FINDING

Taxpayer's protest to the imposition of the penalty is sustained.

SUMMARY

Taxpayer's Issue I protest regarding the imposition of adjusted gross income tax is sustained. Taxpayer's Issue II protest regarding the imposition of penalty is sustained.

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An [html](#) version of this document.